# *The* CASE *of* Robert Pelham *Esq*; Mary *his Wife*, John Still *Esq*; *and* Mabell *his Wife, upon the Appeal brought againſt them in the Houſe of Lords, by* Robert Pitt *and others.*

WIlliam Sherley ſeized in Fee of Lands in *Blandford* in the County of *Dorſet*, ſettles them on *Jane* his Wife for Jointure, the Remainder to the Heirs of their Bodies; and for want of ſuch Iſſue, to his Right Heirs.

In 1657, he makes his Will in theſe words: [**I appoint my dear Wife my ſole Executrix. My Land at** Blandford **which is my Wives Jointure, I do confirm unto her; And, after her deceaſe, I appoint to be ſold, and the money that is made of it, to be divided by equal portions among theſe four, namely, one part to be diſpoſed of by my Wife; the other three parties are my three Nephews,** William Major, Ezra Sherley, **and** Jonadab Savage. **I give to my Couſin** Roger Higham **Twenty pounds. And in caſe any of my three above-named Nephews ſhall die before the deceaſe of my Wife, that then my Couſin** Roger Higham **ſhall have that portion of Money, which upon the ſelling of my Land at** Blandford, **ſhould have fallen to that Nephew.**] And then dies without Iſſue, leaving the ſaid *Ezra Sherley* his Heir.

*Ezra Sherley* dies before *Jane*, leaving the Defendents, *Mary Pelham* and *Mabel Sherley* his Siſters and Coheirs.

*Jane* the Executrix, with *Major*, *Savage*, and *Higham*, exhibit their Bill in 1663, againſt *Pelham* and his Wife, and *Mabel*, to prove the Will, and compel them to ſell, &c.

*Pelham* and his Wife and *Mabel* anſwer, and Witneſſes examined in *Auguſt* 1664.

*Pendente Lite* in *Febr* 1664. the now Plaintiff *Robert Pitt* purchaſeth of *Major*, *Savage*, *Higham*, and *Jane*, their Intereſts in the ſaid Lands given them by the Will.

*Jane* dies in the year 1666; makes the ſaid *Higham* and *Richard Harris* her Executors.

The now Plaintiffs and Appellants, to wit, *Pitt*, *Major*, *Savage*, *Higham* and *Harris*, exhibit their Bill in Chancery, to compel the Coheirs to convey the Land to *Pitt* and his Heirs, he having bought their ſeveral ſhares.

## The Caſe and Proceedings in Chancery.

THE Appellant's Bill was exhibited in *Michaelmas* Term 1666.

The 8th of *June* 1668 the Cauſe was heard before the Maſter of the Rolls, when 'twas ordered, That a Caſe ſhould be drawn up and heard before the Lord-Keeper the ſixt of *November* following.

The 7th of *Novemb.* 1668, For that the Cauſe on hearing appeared to be of Weight and Conſequence in the Preſident of it, his Lordſhip ordered Copies of the Caſe ſtated ſhould be delivered to Juſtice *Twiſden* and Juſtice *Wilde*, and would adviſe with them, and after appoint a day to hear Counſel, and deliver Opinion.

The 29th of *April* 1669, the Cauſe was heard, and his Lordſhip being aſſiſted by Juſtice *Twiſden* and Juſtice *Wilde*, and Preſidents being then offered what had been done by the Court in Caſes of like nature, 'Twas ordered, that the Parties ſhould give Notes to each other of the Preſidents they would inſiſt on: vvith vvhich his Lordſhip and Judges being attended, vvould adviſe, and then deliver his Judgment.

That Notes of Preſidents vvere accordingly given, and Copies thereof preſented to his Lordſhip and the Judges.

The 18th of *May* 1669, His Lordſhip having adviſed vvith the ſaid Judges, for the better clearing the Cauſe for Determination, ordered a Tryal at Law ſhould be had on theſe two Points:

1. *Whether* Jane *the Relict and Executrix of* William Sherley, *had power, and could by the Will have made ſale of the Lands in queſtion?*
2. *Whether a Sale by her Executors (admitting ſuch Sale to be actually made) be a good Sale of the Land?* and after Tryal, either Side to reſort to the Court for final Determination.

Theſe Points were drawn up into a Declaration, ſettled and agreed by Counſel on both ſides, and Summer Aſſizes 1669, tryed at *Dorcheſter* in *Dorſet*, when by conſent of Counſel there was a ſpecial Verdict, which in *Michaelmas* Term after was returned, and fixed for Argument.

In *Hilary* Term 1669, both Points vvere ſolemnly debated in the Court of *Common-Pleas*, by learned Counſel on both ſides, and further day given for Argument till next Term.

In the beginning of laſt *Trinity* Term it vvas argued again on both Sides, and afterwards the Court upon ſerious conſideration, delivered their Opinions (*nemine contradicente*) for the Defendents, *Pelham*, *&c.* on both Points; and *that the ſaid Deviſe was VOID IN LAW.*

The 16th *July* laſt, the Defendants reported the ſame to the Lord-Keeper, and thereupon moved for a Diſmiſſion of the Bill, when 'twas ordered to be ſet down for hearing before his Lordſhip, on the Equity reſerved.

Afterwards, 4th of *July* laſt, the ſame came to hearing before his Lordſhip, being aſſiſted by Baron *Littleton*; and after a long Debate of Counſel learned on both Sides, and hearing the Preſidents, and what poſſibly could be alleaged on either Side, and having very ſeriouſly conſidered and compared the Caſe in queſtion with all the Preſidents before produced, his Lordſhip found great difference between them; And the Deviſe of the Will in queſtion being *void* in the very Conſtitution thereof, and for other great and vveighty Reaſons, his Lordſhip ſaw no cauſe nor colour in Equity to diſinherit Heirs at Law upon a voluntary Deviſe vvhich vvas void in Law, and therefore ordered a Diſmiſſion of the Appellants Bill, vvhich vvas done accordingly.

All theſe matters are plainly manifeſt by the ſeveral Orders and Proceedings ready to be produced. And now after all theſe ſolemn Debates and Arguments in the Courts both of Law and Equity; and after four or five years Suit at Law, and great Sums exſpended thereby, and the Defendents being ſtill kept out of poſſeſſion by the pretended Purchaſe of this *Pitt* (who ſtept into the ſame in the midſt of a Law-Suit then depending) he now, for further vexation and protraction of time, appeals to the Lords Spiritual and Temporal in Parliament, for relief againſt, and after all this grave and ſerious Judgment.

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